

that the dispersion has a single glass transition temperature and that the CETP inhibitor is from the class of compounds having structure IV, as originally defined in claim 17.

In view of the fact that the independent claims now require that the CETP inhibitor be from a particular class, claims 11-16 and 19-34 have been canceled.

Claims 97 and 98 have each been amended to reflect that the CETP inhibitor has structure IV as defined in claim 1.

New claim 100 has been added. It features the specific CETP inhibitor exemplified as Drug 2 in examples 6-7, and is supported at page 122, lines 4-6.

No new fees are believed due for the addition of new claim 100 inasmuch as at least an equal number of claims has been canceled. If the Office disagrees, however, any fees that are owed should be charged to Applicants' Deposit Account No. 16-1445. Two copies of this paper are enclosed.

All claims currently in the application were rejected under 35 USC §102 as anticipated by, and under 35 USC §103 as obvious over, Sikorski, WO 99/14204, for the reasons presented in the Office Action mailed on July 28, 2005.

It is noted that Applicants continue to dispute both rejections for all of the reasons submitted in their previous responses, including the Declarations also submitted therein, all of which are incorporated by reference in this response. Applicants further reserve the right to file one or more divisional or continuation applications directed to any of the subject matter that is now excluded from the scope of Applicants' claims because of any of the instant amendments.

In an effort to expedite prosecution, Applicants have made significant amendments to their claims which, it is respectfully submitted, clearly obviate both the §102 and 103 rejections in the Office Action. All of the claims now require that the CETP inhibitor be from a specific class, namely the class disclosed as structure IV in the specification and as now incorporated into each of claims 1-4 and all claims depending therefrom. For completeness, it is noted that these particular CETP inhibitors are disclosed in commonly assigned US Application No. 09/391,152, published in the U. S. as US 2002/0103225 A1.

Claims 1-4 now also reflect that the dispersion has a single glass transition temperature, T<sub>g</sub>. The single T<sub>g</sub> reflects, *inter alia*, the fact that the dispersion is a homogeneous molecular dispersion, as opposed to a mixture of individual components each reflecting its own bulk melting point.

Sikorski neither discloses nor suggests the particular class of CETP inhibitors now required in Applicants' claims. For that reason alone the anticipation rejection

should be withdrawn as having been obviated. Further, Sikorski does not suggest that his compositions should possess a single glass transition temperature. Thus, Sikorski does not disclose, and would not suggest to those of ordinary skill in the art, a dispersion having a single glass transition temperature wherein the dispersed CETP inhibitor has the structure now defined in Applicants claims.


Claim 100 is clearly not anticipated since it is directed to a single compound Sikorski never discloses.

Regarding obviousness, it is well accepted in the art that for an obviousness rejection to lie, it is the prior art that must somehow suggest or motivate that which Applicant has done, and also provide an expectation of success. In re Dow Chemical Co., 5 USPQ2d 1529, 1531 (Fed. Cir. 1988); Amgen, Inc. v. Chugai Pharmaceutical Co. Ltd., 18 USPQ2d 1016, 1022-23 (Fed. Cir.), cert. denied, 502 U.S. 856 (1991). Only Applicants have made that suggestion, however, not Sikorski. Thus it is respectfully submitted that the obviousness rejection has been overcome, for all of the reasons Applicants previously advanced, in addition to which Sikorski says nothing about the particular class of CETP inhibitors now required or any requirement for exhibiting a single Tg.

In view of the foregoing comments and amendments and the Declarations submitted herewith, it is respectfully submitted that this case is in condition for allowance. A Notice of Allowance is courteously solicited.

Respectfully submitted,

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